U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

OCT 4 2000

FILE: [redacted] Office: BANGKOK, THAILAND Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(9)(B)(v)

Public Copy

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director in Bangkok, Thailand, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The applicant is a native and citizen of New Zealand who was found by a consular officer to be inadmissible to the United States under § 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act, (the Act), 8 U.S.C. 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant married a United States citizen in December 1999 and is the beneficiary of an approved immediate relative visa petition. The applicant seeks the above waiver in order to reside with her spouse in the United States.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

On appeal, counsel argues that the acting district director ignored or dismissed compelling factors which clearly indicate the presence of extreme hardship to the United States citizen spouse. Counsel asserts that economic and emotional considerations established in the record indicate the presence of extreme hardship above the normal social and economic disruptions cited by the acting district director in his denial of the application.

Section 212(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-Except as otherwise provided in this Act, aliens who are ineligible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(9) ALIENS PREVIOUSLY REMOVED.-

(B) ALIENS UNLAWFULLY PRESENT.-

(i) IN GENERAL.-Any alien (other than an alien lawfully admitted for permanent residence) who-

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure from the United States, is inadmissible.

(v) WAIVER.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or

action by the Attorney General regarding a waiver under this clause.

The Board has held that extreme hardship is not a definable term of fixed and inflexible meaning, and that the elements to establish extreme hardship are dependent upon the facts and circumstances of each case. These factors should be viewed in light of the Board's statement that a restrictive view of extreme hardship is not mandated either by the Supreme Court or by its own case law. See Matter of L-O-G-, 21 I&N Dec. 413 (BIA 1996).

In Matter of Cervantes-Gonzalez, Interim Decision 3380 (BIA 1999), the Board recently stipulated that the factors deemed relevant in determining whether an alien has established "extreme hardship" in waiver proceedings under § 212(i) of the Act include, but are not limited to, the following: (1) the presence of a lawful permanent resident or United States citizen spouse or parent in this country; (2) the qualifying relative's family ties outside the United States; (3) the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; (4) the financial impact of departure from this country; (5) and finally, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The record contains affidavits and medical reports relating to the emotional and psychological ill health of the applicant's spouse, as well as the detrimental financial impact his departure from this country would have. A medical doctor has testified that the U.S. citizen spouse is depressed and suicidal, to the extent that hospitalization is recommended, due to his separation from the applicant. In addition, affidavits regarding the employment situation of the applicant's spouse indicate that his planned career in the family business and source of livelihood would terminate upon his departure were he to relocate abroad to reside with his wife.

The grant or denial of the above waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Attorney General and pursuant to such terms, conditions, and procedures as she may by regulations prescribe.

A review of the documentation in the record, when considered in its totality, sufficiently establishes the existence of hardship caused by separation and prospective emotional and financial hardship that reaches the level of extreme as envisioned by Congress if the applicant is not allowed to enter the United States. It is concluded that the applicant has established the qualifying degree of hardship in this matter and warrants the favorable exercise of the Attorney General's discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 212(h), the burden of proving eligibility

remains entirely with the applicant. Matter of Ngai, 19 I&N Dec. 245 (Comm. 1984). Here, the applicant has met that burden. Accordingly, the decision of the acting district director will be withdrawn, and the waiver application will be approved.

ORDER: The appeal is sustained.